IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Nawal Ram
Vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.784/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 17th August, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.P.P. Choudhary , for the petitioner.
Mr.Rameshwar Dave, Dy.Govt. Advocate.
Mr.S.K. Malik, for the respondents No.2 and 3.

BY THE COURT

In the present writ petition, the petitioner has prayed for writ of mandamus to be issued against the respondents on the following reliefs by issuance of appropriate writ order of direction:-

1. the respondents may be directed to grant annual increments to the petitioner with effect from 1992, with all consequential benefits and reliefs;
2. the interest on the arrears so accrued, on account of grant of due annual increments, at the rate of 18% per annum may also kindly be allowed;
3. the respondents may be directed to fix salary of the petitioner in the new pay scales revised from time to time, with all consequential benefits, as if petitioner was never denied this benefits; along with interest at the rate of 18% per annum;
4. the respondents may be directed to treat the petitioner in continuous service, in view of judgment of this Hon'ble Court in WP No.2245/1999 and make payment of arrears so accrued, payable with effect from date of his termination till petitioner was reinstated in service, with all consequential benefits; along with interest at the rate of 17% per annum.

The aforesaid prayers have been made in background that the petitioner vide order dated 11th December, 1992 was placed under suspension on the ground that a disciplinary inquiry was contemplated against him. Instead of conducting the disciplinary inquiry against the petitioner, respondent No.3 filed a case

against the petitioner under Section 74(2) of the Rajasthan Co-operative Societies Act, 1965 (for short 'Act of 1965') before the Deputy Registrar, Co-operative Societies, Pali. The Deputy Registrar vide his order dated 01st January, 1993 held the petitioner guilty of the charges levelled against him. On the basis of such order, service of the petitioner was terminated vide order dated 01st January, 1993.

The petitioner filed an appeal against the said order before the Additional Registrar (Appeals) who vide his order dated 06th April, 1994 allowed the appeal. The respondent No.3 Sojat Road Co-operative Societies Marketing Ltd., Sojat Road, Pali filed revision petition under Section 128 of the Act of 1965 before the Registrar, Co-operative Society against the aforesaid order dated 06th April, 1994. The revisional authority by its order dated 11th August, 1998 set aside the appellate order and remanded the matter back to the appellate authority for deciding afresh after hearing both the parties. The Additional Registrar (Appeals) again by his order dated 31.02.1998 allowed the appeal of the petitioner holding that petitioner not found guilty of the charges levelled against him. Thereafter, the petitioner submitted representation to the respondent No.3 on 07th December, 1998 on the ground that now he has been exonerated and he may be reinstated in service. Services of the petitioner were dismissed

only on the basis of order of Deputy Registrar dated 01st January, 1993. He submitted another representation on 29th April, 1999. When nothing happened, the petitioner filed a writ petition being S.B. Civil Writ Petition No.2245/1999. In the said writ petition, this Court by interim order dated 05th July, 1999 directing the Society to pass appropriate order in compliance of the orders of disciplinary authority. Finally the writ petition was allowed by this Court vide order dated 04th May, 2001 and the termination order of the petitioner dated 01.11.1993 was quashed on the premise that only basis for removal of the petitioner having now disappeared with the order of the appellate authority, the order of his removal cannot be sustained. This Court however gave liberty to the respondents to proceed against the petitioner strictly in accordance with law. The petitioner has submitted that he made representation to the respondents on 01 June, 2001, 18th July, 2001, 09th November, 2001 and 06th December, 2001 but the petitioner has not been paid increments with effect from 1992 as well as salary in the revised pay scales for the post of Store-keeper by the respondent Society. Being aggrieved by non-payment of all these benefits, the petitioner has filed the present writ petition with the aforesaid prayer.

The respondents have contested the writ petition and filed

a reply thereto. In the reply it is stated that a charge-sheet was issued to the petitioner by the Manager of Sojat Road KVSS Ltd. on 21.06.2001 for embezzlement committed by him during the course of employment and he has also submitted reply. The inquiry officer was appointed on 27.06.2001. Thereafter the inquiry officer was transferred on 21.08.2002.

The petitioner has filed an additional affidavit on 16.05.2003. In this additional affidavit, he has placed on record the certified copy of the order dated 02.07.2003 whereby his appeal failed against the order of the Deputy Registrar passed afresh on 11.11.2002 under Section 74(2) of the Act has been allowed. It appears that this is the order which has been passed by the Additional Commissioner after remand from the Registrar Co-operative Societies. The Additional Registrar (Appeals) has set aside the order dated 11.11.2002 passed by the Deputy Registrar. Apart from this, the petitioner has also placed on record another inquiry report with an additional affidavit filed on 18.05.2005. In this inquiry also he has been exonerated.

I have heard learned counsel for the parties and perused the material placed on record.

When the case was taken up on 15th May, 2006, this Court

required to the learned counsel for the respondents to explain as to under what provision of law, the Drawing & Disbursing officer has withheld the increments of the petitioner inasmuch as has not granted him benefit of revision of pay scale and the arrears thereof. Learned counsel wanted time to place on record the required information. In this circumstances, when the matter was against listed before the Court on 06th July, 2006 another opportunity was granted to the learned counsel to place on record the requisite information. The matter was again adjourned on 19th July, 2006 and thereafter it was listed on 27th July, 2006 and on that date the arguments were finally heard.

Once when the removal of the petitioner was held to be illegal by this Court vide its judgment dated 04th May, 2001, there was absolutely no justification for the respondents not to comply with the aforesaid judgment. Even though, it appears that the respondents have reinstated the petitioner in duty but have not granted him annual grade increment w.e.f. 1992 nor have they revised his salary under the Revised Pay Scales Rules promulgated from time to time nor they have given the benefit of arrears of all these dues of the petitioner. When the petitioner has not been found guilty in number of inquiries conducted against him, the respondents could not refuse to pay him the benefits of increments and revised pay scales under the Revised

Pay Scales Rules. They also could not withhold the amount of arrears that become due.

In view of the aforesaid discussion, the present petition is allowed. The respondents are directed to revise the pay scale of the petitioner under the Revised Pay Scales Rules applicable from time to time and pay him due increments from 1992 onwards and also directed to pay arrears. Compliance of this order however shall be made within a period of three months from the date of receipt of copy of this order. There shall not no order as to costs.

[MOHAMMAD RAFIQ],J.

Ashwini/-